MAJLIS PEGUAM MALAYSIA & ANOR v. JUDY BLACIOUS AF PEREIRA

COURT OF APPEAL, PUTRAJAYA
DAVID WONG DAK WAH JCA
ABDUL RAHMAN SEBLI JCA
PRASAD SANDOSHAM ABRAHAM JCA
[CIVIL APPEAL NO: W-02(IM)-256-02-2015]
7 SEPTEMBER 2016

CIVIL PROCEDURE: *Jurisdiction – High Court – Petition for admission as advocate and solicitor – Petition objected by Bar Council on allegation that petitioner not fit and proper person to be called to Bar – High Court dismissed notice of objection and caveat – Petitioner ordered to attend eight hours of any course, forums or programs conducted by Human Rights Committee of Malaysian Bar for three months – Petitioner to be called to Bar upon completion of programs – Appeal against conditional order – Whether High Court had jurisdiction to impose conditional order after dismissing Bar Council's objections – Legal Profession Act 1976, s. 10*

LEGAL PROFESSION: *Admission – Petition for admission – Objection by Bar Council – Allegation that petitioner not fit and proper person to be called to Bar – High Court dismissed notice of objection and caveat – Petitioner ordered to attend eight hours of any course, forums or programs conducted by Human Rights Committee of Malaysian Bar for three months – Petitioner to be called to Bar upon completion of programs – Appeal against conditional order – Whether High Court had jurisdiction to impose conditional order after dismissing Bar Council's objections – Legal Profession Act 1976, s. 10*

The petitioner petitioned to be called to the Bar and be admitted as an advocate and solicitor of the High Court of Malaya. The petition was objected by the first appellant on the basis that the petitioner was not a fit and proper person to be called to the Bar. The notice of objection and caveat filed by the first appellant was sustained by the High Court and the petition was dismissed. However, the petitioner was successful in his appeal to the Court of Appeal. The Court of Appeal was of the view that the objection of the first appellant was heard prematurely and therefore, the order of the High Court was set aside and the petition and the notice of objection was reinstated. The petition was re-heard before another High Court Judge ('the HCJ'). The HCJ dismissed the notice of objection and caveat and ordered that the petitioner ('the order') attend eight hours of any course, forums or programs conducted by the Human Rights Committee of the Malaysian Bar for three months ('the conditions'); only upon the completion of these programs will the petitioner be called to the Bar. Hence, the present appeal by the appellants against the order. The first appellant argued that after dismissing their objections, the HCJ had no jurisdiction to impose conditions in the order.

Held (dismissing appeal with no order as to costs)
Per Prasad Sandosham Abraham JCA delivering the judgment of the court:

(1) Under s. 10 of the Legal Profession Act 1976 ('the LPA'), the High Court retains the discretion to admit the petitioner as an advocate and solicitor of the High Court subject to the requirements of the LPA. Having dismissed the objections of the first appellant, the High Court, before admitting a petitioner, has a discretion to impose such prescriptive orders and corollary to admitting the petitioner as an advocate and solicitor. The High Court did not exceed its jurisdiction as, in essence, the order was still an order to admit the petitioner as an advocate and solicitor which is well within its jurisdiction under s. 10 of the LPA. (para 14)

(2) The purport of the order being appealed against was to dismiss the objections of the first appellant and adjourn the petition, which is well within the jurisdiction of the High Court. The prescriptive aspects of the order did not go to the root of what was being sought by the petitioner *ie,* being enrolled as an advocate and solicitor of the High Court. There was nothing irregular nor could the argument of lack of jurisdiction tainting the order be sustained. (para 15)

Bahasa Malaysia *Headnotes*

Pempetisyen memfailkan petisyen untuk berdaftar dalam Majlis Peguam dan diterima masuk sebagai peguam bela dan peguam cara Mahkamah Tinggi Malaya. Petisyen ini dibantah oleh perayu pertama atas alasan pempetisyen tidak wajar dan sesuai berdaftar dalam Majlis Peguam. Notis bantahan dan kaveat yang difailkan oleh perayu pertama dibenarkan oleh Mahkamah Tinggi dan petisyen ditolak. Walau bagaimanapun, pempetisyen berjaya dalam rayuannya di Mahkamah Rayuan. Mahkamah Rayuan berpendapat bantahan perayu pertama dibicarakan pramatang dan oleh itu, perintah Mahkamah Tinggi diketepikan dan petisyen dan notis bantahan dihidupkan semula. Petisyen didengar di hadapan Hakim Mahkamah Tinggi ('HMT') lain. Hakim Mahkamah Tinggi menolak notis bantahan dan kaveat serta memerintahkan pempetisyen ('perintah') menghadiri, selama lapan jam, mana-mana kursus, forum atau program anjuran Jawatankuasa Hak Asasi Manusia Majlis Peguam Malaysia untuk tiga bulan ('syarat-syarat'). Petisyen akan didaftarkan dalam Majlis Peguam setelah pempetisyen menghadiri program-program ini. Maka timbul rayuan oleh perayu-perayu terhadap perintah tersebut. Perayu pertama menghujahkan bahawa selepas menolak bantahan mereka, HMT tidak berbidang kuasa mengenakan syarat-syarat dalam perintah tersebut.

Diputuskan (menolak rayuan tanpa perintah terhadap kos)
Oleh Prasad Sandosham Abraham HMR menyampaikan penghakiman mahkamah:

(1) Berdasarkan s. 10 Akta Profesion Undang-Undang 1976 ('APU'), Mahkamah Tinggi mempunyai budi bicara menerima masuk pempetisyen sebagai peguam bela dan peguam cara Mahkamah Tinggi tertakluk pada syarat-syarat dalam APU. Selepas menolak bantahan perayu pertama, Mahkamah Tinggi, sebelum menerima masuk pempetisyen, mempunyai budi bicara mengenakan perintah preskriptif dan korolari untuk menerima masuk pempetisyen sebagai peguam bela dan peguam cara. Mahkamah Tinggi tidak melampaui bidang kuasanya kerana, asasnya, perintah tersebut adalah perintah menerima masuk pempetisyen sebagai peguam bela dan peguam cara dan ini terangkum dalam bidang kuasanya di bawah s. 10 APU.

(2) Tujuan rayuan terhadap perintah adalah untuk menolak bantahan perayu pertama dan menangguhkan petisyen; ini terangkum dalam bidang kuasa Mahkamah Tinggi. Sifat preskriptif perintah tersebut tidak memberi kesan pada akar umbi perkara yang dipohon oleh pempetisyen iaitu penerimaan masuk sebagai peguam bela dan peguam cara Mahkamah Tinggi. Tiada ketakaturan mahupun hujahan tentang ketiadaan bidang kuasa yang mencacatkan perintah tersebut dikekalkan.

Case(s) referred to:
Re SRC Augustin [1972] 1 LNS 128 FC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 10, 11(1)(b), 14(3), 16, 17

For the appellants - Malik Imtiaz Sarwar; M/s Malik Imtiaz Sarwar
For the respondent - Domnic Selvam; M/s Rajandran Domnic & Co

[Editor's note: For the High Court judgment, please see In Re: Judy Blacious AF Pereira [2014] 1 LNS 816 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Prasad Sandosham Abraham JCA:

Introduction

[1] This appeal was heard and disposed on 6 July 2015 wherein we had dismissed this appeal with no order as to costs, and affirmed the order of the High Court on 17 December 2014 (see pp. 12-13 of RR). We will refer to the appellant as Majlis Peguam Malaysia and the respondent as petitioner. Majlis Peguam Malaysia now seeks to apply for leave from the Federal Court to appeal based on questions of law framed.

Background Facts

[2] The facts are elucidated from the pleadings, judgment of the learned judge and the submissions of respective parties.

[3] The petitioner was a member of the police force having risen to the rank of a Superintendent of Police prior to his retirement. The petitioner has a law degree in which upon his retirement at the age of 60, he decided to apply for pupillage with a view to be called to the Bar and be admitted as an advocate and solicitor of the High Court of Malaya.

[4] The first challenge encountered by the petitioner was the fact that the Majlis Peguam Malaysia had objected to his call. It was heard before the learned judge who upheld the objection of the Majlis Peguam Malaysia that the petitioner was not a fit and proper person to be called to the Bar.

[5] The assertion made by Majlis Peguam Malaysia was on the basis that the petitioner as a Deputy OCPD for Brickfields had arrested some Bar Council Legal Aid Centre's ("LAC") lawyers who had gathered outside Brickfields police station to provide legal representation to the people who had gathered there for a candlelight vigil to show solidarity with some human right activists that had been arrested.

[6] The Human Rights Commission (SUHAKAM) had convened a public inquiry into the abuse of human rights by the police in the assembly outside the Brickfields police station and it concluded with a report written by the chairman of the inquiry, Muhammad Shafee Abdullah in which it stated that:

> We find the evidence of DSP Jude totally unsatisfactory. DSP Jude either consciously was not telling the truth or suffered from a serious bout of loss of memory. DSP Jude initially denied interacting with any lawyers until he was confronted with direct evidence and documentary evidence in the form of the video footage.

[7] Majlis Peguam Malaysia reacted to the findings made by SUHAKAM against the petitioner and advanced the argument that the petitioner was not a fit and proper person to be called to the Bar. Majlis Peguam Malaysia then filed a notice of objection on 15 March 2013 and a caveat on 11 June 2013 before the filing of long call papers. The objection was sustained by the learned judge and the petition was dismissed. Dissatisfied, the petitioner appealed to the Court of Appeal.

[8] The Court of Appeal was of the view that the objection of Majlis Peguam Malaysia was heard prematurely and it set aside the order of the learned High Court Judge and reinstated the petition and the notice of objection for hearing on its merits. This matter then came before Justice Lee Swee Seng for hearing of the petition proper for the purpose of the petitioner to be admitted as an advocate and solicitor of the High Court of Malaya.

[9] It is worth noting that the Attorney General had not objected to the petition and had left it to the court to decide. The Honourable Chief Judge of Malaya too had not filed any unfavourable report with the court pursuant to s. 14(3) of the Legal Profession Act 1976 (LPA). However, the Perak Bar Committee had supported Majlis Peguam Malaysia's objection.

[10] The Court of Appeal allowed the appeal by the petitioner and ordered that the appeal be remitted to the High Court for the petition to be fixed for hearing. Upon the hearing of the petition at the High Court, the learned judge dismissed the notice of objection and caveat and ordered that the petitioner to attend eight hours of any course, forums, programmes conducted by the Human Rights Committee of the Malaysian Bar for three months. Upon completion of the said programmes, the petitioner will be called to the Bar on 25 March 2015. Dissatisfied with the decision of the learned judge hence the present appeal.

Findings

[11] On 23 July 2012, the petitioner's petition to be called to the Bar was fixed to be heard before the learned judge. At the same time, Majlis Peguam Malaysia had filed a notice of objection dated 19 March 2013 and notice of caveat dated 11 June 2013 to object to the petitioner being called to the Bar pursuant to ss. 16 and 17 of the Legal Profession Act 1976 (LPA). The grounds of their objection were essentially that the petitioner was not of good character and therefore should not be called to the Bar as the qualifications for admission had not been fulfilled pursuant s. 11(1)(b) of the LPA.

[12] The learned judge heard lengthy submissions and thereafter dismissed the objections of Majlis Peguam Malaysia and adjourned the petition for call for hearing on 25 March 2015 wherein the petitioner would be admitted to the Rolls of the High Court as an advocate and solicitor. With regard to the appeal as to the finding of the learned judge that the petitioner was of good character and therefore qualified to be admitted as an advocate and solicitor of the High Court of Malaya, we find the learned judge had dealt *in extenso* with the question of what constitutes "good character" by reference to the leading cases in this area on the point. We would only add that we also make reference to the case of *Re S.R.C. Augustin* [1972] 1 LNS 128; [1973] 1 MLJ 208 which from the facts was a much more extreme case than the one before us and yet the court allowed the admission of the petitioner. We make reference to the judgment of Ong CJ (as he then was) and we quote at para. G to I at p. 208:

> The objection raised was not in respect of a mere peccadillo but misconduct of a serious nature. The facts cannot be glossed over. There is the public interest to consider. The clients of a legal practitioner are often illiterate and simple people. Would Mr. Augustin be able to look after their interests with scrupulous honesty and fidelity? If not, what of the high reputation for integrity in the profession he seeks to enter?

> Would not the mere fact of his admission tarnish the reputation of the body as a whole? Would he be a risk I should not foist on a professional body against their will? Section 4 of the Advocates and Solicitors Ordinance leaves the decision entirely to my discretion. It would be a simple matter to follow Pontius Pilate and wash my hands of responsibility by letting the majority view prevail. But would that be in exercise of my discretion or a shirking of my duty? I have accordingly taken time to ponder over my decision and its consequences.

We also quote from the same judgment at para. H p. 209:

> The same considerations apply, in my opinion, to striking off the roll and refusing admission. It is entirely a question of character and fitness. On the file in support of Mr. Augustin's petition are certificates of his good character given by practitioners of several years' standing. His offence and conviction in the Thai Military Court had been reported on December 4, 1963 by the Attorney-General to the Inn of which he was admitted as a student in January 1961 – while still in the police force. The Treasurer was content, in view of the sentence served, to issue a warning that any future misconduct might lead to his being struck off the roll of students. The blot on his record did not obstruct his call to the Bar on November 26, 1969.
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> I am sure the Inns of Court are every bit as jealous of the honour of those admitted to the English Bar as are advocates and solicitors in Malaysia regarding the reputation of the legal fraternity. The objectors have freely conceded that nothing had been known to the discredit of Mr. Augustin since January 1964. For my own part I think that he has learnt a bitter lesson and there remains nothing more that he has to atone for. Should I dismiss this petition I would in effect be saying that he suffers from an incurable and ineradicable defect of character. I do not think one can safely be prophetic about the future conduct of anybody except drug addicts and habitual criminals. Nor do I think, quoting from Lord Lindley's judgment at page 477 in Weare's case that "it would be a stretch of charity which would degenerate into absurd and ridiculous weakness" to consider the unhappy episode a closed chapter in Mr. Augustin's past. He must know that the future consequences of any misconduct will be visited with the severest sanctions. Where, in 1964 we had readmitted an advocate and solicitor struck off the rolls six years earlier, our trust and confidence has not been misplaced. I do not think Mr. Augustin will lightly abuse my trust. I shall accordingly allow this petition.

[13] The learned judge had critically analysed the relevant cases before coming to his conclusions and we would hasten to add the learned judge in this particular case took a more holistic and compassionate approach to the petitioner in question and given all the circumstances of the case we find that on this issue of "good character", the learned judge has not demonstrated any appealable error that warrants the intervention of this court.

A **[14]** There also was a point raised by Majlis Peguam Malaysia that after dismissing their objections the learned judge has no jurisdiction to impose conditions in the said order requiring the petitioner to comply with certain courses, and programmes within three months of the date of the order. Under s. 10 of the LPA the High Court retains the discretion to admit the petitioner
B as an advocate and solicitor of the High Court subject of course to the requirements of the LPA. In our view having dismissed the objections of the MPM, the court before admitting a petitioner has discretion to impose such prescriptive orders as and corollary to admitting the petitioner as an advocate and solicitor. The High Court did not exceed its jurisdiction as in essence the
C order was still an order to admit the petitioner as an advocate and solicitor which was well within its jurisdiction under s. 10 of the said Act.

[15] Looking at the order being appealed against, the purport of the order was to dismiss the objections of Majlis Peguam Malaysia and thereafter to adjourn the petition for call to 25 March 2015 which was well within the
D jurisdiction of the High Court. As we alluded to earlier, the prescriptive aspects of the order do not go to the root of what was being sought for by the petitioner ie, being enrolled as an advocate and solicitor of the High Court. We therefore find nothing irregular nor can be argument of lack of jurisdiction tainting the order be sustained.

E **[16]** As a post script, we find it strange that this argument is being ventilated by Majlis Peguam Malaysia. If anybody should be arguing against this, it should have been the petitioner. We feel in this important area where the High Court is the final "sieve" before an advocate and solicitor is allowed to practice in the light of the objections taken by the Majlis Peguam Malaysia
F we feel that it is commendable and judicially innovative on the part of the learned judge to allow every opportunity for the petitioner to be "prepared" to carry out and maintain the noble traditions of the Bar.

[17] For the aforesaid reasons, we dismissed the appeal with no order as to costs.

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